

“Legacy Litigation” and Act 312 of 2006

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I. INTRODUCTION

During its 2006 Regular Session, the Louisiana Legislature enacted Act 312, reforming the procedure in litigation claiming environmental damages arising from oilfield operations.¹ Act 312 was the legislature’s second major response to the decision of the Louisiana Supreme Court in *Corbello v. Iowa Production*.² This Article reviews the historical background of legacy litigation, summarizes the substantive content of Act 312, and describes significant developments since Act 312 became law.

II. HISTORICAL BACKGROUND

In Louisiana, the legal framework for claims by landowners for damages caused by oil and gas operations has been established for decades. The number and magnitude of such claims, however, increased dramatically following the decision of the Louisiana Supreme Court in *Corbello*.³ The Louisiana Supreme Court held that, in a claim for breach of a *contractual* obligation to restore property, damages need not be

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1. 2006 La. Acts 312 (codified as amended at La. R.S. 30:29, 29.1, 82(6), 89.1, 2015.1(B), (C)(1)-(2), (4), (D), (E)(1), (F)(2), (H)-(I), (K)-(L) (2006)).

2. *Corbello v. Iowa Prod.*, 02-0826 (La. 2/25/03), 850 So. 2d 686.

3. Richard Pabst, *Trends in Louisiana Oil Field Pollution Cases*, ENVIRONMENTAL NOTES (Kean Miller, L.L.P., Baton Rouge, La.), Feb. 2004, at 2, available at <http://www.keanmiller.com/publications.cfm?AJD=33> (follow “Environmental Notes, February 2004” hyperlink).

“tethered” to the value of the property.⁴ Further, the Louisiana Supreme Court recognized that, under the then-existing statutory framework (primarily the Louisiana Oilfield Site Restoration Act), a landowner who collected such damages could not be required by the defendant or the State of Louisiana to actually remediate the damages on which the landowner’s recovery was based.⁵ The Louisiana Supreme Court stressed the failure of the Louisiana Legislature to create such a requirement and seemed to invite consideration of a legislative reaction.⁶

The result of *Corbello* was a perception that contaminated property was the equivalent of a winning lottery ticket for the landowner. The landowner could sue for, and potentially collect, damages greatly in excess of the uncontaminated value of the property and then have no legal obligation to spend that money to remediate the property. Further, under the law as it then existed, the State of Louisiana would bear the cost of any remediation that it determined necessary to protect the public interest, because the Louisiana Oilfield Site Restoration Act provided a defendant (usually the entity that caused the contamination or would otherwise be legally responsible for it) a “dollar-for-dollar” credit in the amount of payments to the landowner against subsequent claims by the State for remediation.⁷

In the wake of *Corbello*, hundreds of new lawsuits were filed by landowners seeking damages from oil and gas exploration companies for alleged environmental damage to their properties.⁸ These types of actions are known as “legacy litigation” because they often arise from operations conducted many decades ago, leaving an unwanted “legacy” in the form of actual or alleged contamination.⁹

Legislative reaction to *Corbello* came swiftly, in the form of the so-called “Corbello Act,” of the 2003 Regular Session of the Louisiana Legislature.¹⁰ This act created section 2015.1 of title 30 of the Louisiana Revised Statutes (section 2015.1). Much of the damages in *Corbello* had arisen from an alleged threat to a publicly significant aquifer.¹¹ Consequently, in a critical compromise, the effect of this Act was limited to claims “to recover damages for the evaluation and remediation of any

4. *Corbello*, 02-0826 at p. 9; 850 So. 2d at 693.

5. *Id.* at pp. 27-29; 850 So. 2d at 699 (citing Louisiana Oilfield Site Restoration Law, LA. REV. STAT. ANN. § 30:80-97 (2006)).

6. *Id.* at pp. 28-31; 850 So. 2d at 699-701.

7. LA. REV. STAT. ANN. § 30:89.1.

8. Briggs, *supra* note 3.

9. *See id.*

10. 2003 La. Acts 1166 (codified as amended at LA. REV. STAT. ANN. § 30:2015.1).

11. 02-8026, pp. 20-23 (La. 2/25/03); 850 So. 2d 686, 697-98.

contamination or pollution that is alleged to impact or threaten usable ground water.”¹²

Despite the critical limitation to usable ground water claims, section 2015.1 created a framework to avoid the perceived problems with *Corbello*. It originally required plaintiffs to notify the Louisiana Department of Natural Resources (LDNR) and the Louisiana Department of Environmental Quality (LDEQ) of such claims, and accorded such agencies a right to intervene, although the requirement to notify the LDNR was repealed by Act 312.¹³ Most significantly, when contamination within the scope of section 2015.1 was established, the Act required the responsible party to formulate a remediation plan and deposit funds in the registry of the court to fund the actual implementation of the remediation plan under court supervision.¹⁴ The Act also created rights of plaintiffs and the applicable state agencies to recover costs, including expert witness fees and attorney fees, related to proving groundwater contamination claims.¹⁵

The 2003 enactment of section 2015.1 did not seem to discourage landowners from filing claims. Indeed, many petitions expressly stated that they were not bringing claims for contamination or pollution of usable ground water subject to section 2015.1, removing such litigation from the effect of section 2015.1.¹⁶ These lawsuits instead focused on alleged surface damages, often related to the pits once commonly used to contain by-products (primarily also water, which may contain other contaminants) of oil and gas exploration and production activities.

Legacy litigation likewise proceeded following the Louisiana Supreme Court’s 2005 decision in *Terrebonne Parish School Board v. Castex*.¹⁷ *Castex* held that in the absence of an express contractual restoration obligation, the Louisiana Mineral Code¹⁸ did not create an implied duty of a mineral lessee to restore the surface after the “ordinary, customary, and reasonable acts” done for drilling or exploration, unless caused by “unreasonable or negligent operations.”¹⁹ As might be expected, many petitions in legacy cases have been amended to include

12. LA. REV. STAT. ANN. § 30:2015.1(B).

13. *Id.*; 2006 La. Acts 312.

14. LA. REV. STAT. ANN. § 30:2015.1(C).

15. *Id.* § 30:2015.1(E)-(F).

16. RICHARD A. CURRY, CORBELLO AND ITS AFTERMATH 2 (2005), available at <http://www.mcglinchy.com/pdf/corbello.pdf>.

17. 04-0968 (La. 01/19/05); 893 So. 2d 789.

18. LA. REV. STAT. ANN. § 31:1-13.

19. 04-0968 pp. 24-32 (La. 01/19/05); 893 So. 2d 789, 798-801.

allegations designed to defeat an exception of no cause of action based on *Castex*.²⁰

Despite the significant effect of the 2003 legislation, its limitation to usable ground water claims left many with the feeling that further legislation was required. In early 2006, the Governor announced that reform of legacy litigation would be a part of her legislative package.²¹ Senate Bill No. 655 was introduced with the support and involvement of the Governor's staff and the Louisiana Department of Natural Resources.²² There were contentious debates and close votes in the Senate Natural Resources Committee, on the Senate Floor, and the House Natural Resources Committee.²³ Then a set of amendments were adopted on the House Floor without opposition, and the legislation was passed unanimously by the House of Representatives.²⁴ After concurrence by the Senate and the signature of the Governor, it became law as Act No. 312 of the 2006 Regular Session of the Louisiana Legislature.²⁵

III. CONTENT OF ACT 312

Act 312 contains six major components designed to protect the public interest in litigation claiming environmental damage arising from oilfield operations. First, the act requires timely notice to the State of such litigation.²⁶ Second, the act stays such litigation until thirty days after such notice is given.²⁷ Third, the act allows the State to intervene in such litigation.²⁸ Fourth, the act provides a role for the Office of Conservation within LDNR in determining the most feasible plan for evaluation and/or remediation of environmental damage.²⁹ Fifth, the act provides that the Court and the Office of Conservation shall oversee actual implementation of the plan determined to be "most feasible."³⁰

20. *E.g.*, *Hardee v. Atl. Richfield*, 05-1207 (La. App. 3 Cir. 04/05/06); 926 So. 2d 736; *Dore Energy Corp. v. Carter-Langham, Inc.*, 04-1373 (La. App. 3 Cir. 05/04/05); 901 So. 2d 1238.

21. Louisiana Governor Kathleen Baineaux Blanco, 2006 State of the State Address at the Louisiana State Legislature House Chamber (Mar. 27, 2006).

22. Robert Travis Scott, *Oil-Site Cleanup Bill Lures Lobbyists; Measure Pits Industry Against Landowners*, TIMES-PICAYUNE (New Orleans), Apr. 28, 2006, at B4.

23. SB655—2006 Regular Session (Act 312), <http://www.legis.state.la.us/billdata/History.asp?sessionid=06RS&billid=SB655> (last visited Mar. 16, 2007).

24. *Id.*

25. *Id.*

26. LA. REV. STAT. ANN. § 30:29(B)(1) (2006).

27. *Id.*

28. *Id.* § 30:29(B)(2).

29. *Id.* § 30:29(C).

30. *Id.* § 30:29(D).

Finally, the act allows the landowner and the State to recover attorney and expert fees and costs from the responsible party or parties.³¹ This Part will address these and other aspects of Act 312.

Act 312 states that it applies to claims for “environmental damage.” This term, however, is not as broad as it might appear, because “environmental damage” is defined as “any actual or potential impact, damage, or injury to environmental media caused by contamination arising from activities associated with oilfield sites or exploration and production sites.”³² While “oilfield site” and “exploration and production (E&P) site” are defined broadly,³³ it is very clear that Act 312 is intended to apply only to *oilfield claims* and not to other environmental damage claims.

Act 312 removes the claims to which it applies from the jurisdiction of LDEQ. All claims subject to Act 312 are under the jurisdiction of LDNR, including usable ground water claims previously subject to the 2003 legislation. This makes intuitive policy sense, as LDNR has traditionally regulated oil and gas operations in Louisiana, including adopting regulations under Order 29-B requiring the closure of pits in the 1980s.³⁴

Thus, *oilfield* contamination claims are generally subject to Act 312. *Nonoilfield usable ground water claims* remain subject section 2015.1. It should be noted that there remains a category of environmental damage claims by landowners that have not been made the subject of legislation since *Corbello*. Neither piece of legislation addressed claims that are *nonoilfield and do not allege damage to usable ground water*. Such claims appear to remain subject to the reasoning of *Corbello*.

In a manner similar to the 2003 legislation, Act 312 requires that plaintiffs give notice to the state of claims subject to Act 312 at the time cases are initiated. Act 312 notice is made to the Commissioner of Conservation (within LDNR) and the Attorney General, sent by certified mail, return receipt requested, and shall include a copy of the petition and any other filing in such litigation.³⁵ In contrast to section 2015.1, Act 312 notice *is* required to the Attorney General, but *is not* required to LDEQ. Therefore, plaintiffs who have previously given notice pursuant to section

31. *Id.* § 30:29(E).

32. *Id.* § 30:29(I)(1).

33. *Id.* § 30:29(I)(4).

34. LA. ADMIN. CODE tit. 43:XIX, §§ 101-569 (2005).

35. LA. REV. STAT. ANN. § 30:29(B)(1).

2015.1 must nevertheless give notice pursuant to the requirements of Act 312.

Act 312 also requires that notice be issued in the same manner in pending cases. For such cases, the notice was required by August 7, 2006, sixty days following the effective date of Act 312.³⁶ However, the Act specifically excluded from its effect cases that had by that date been settled or had a “final and definitive” judgment on the merits.³⁷ Act 312 also excluded from its effect “any case in which the court on or before March 27, 2006, has issued or signed an order setting the case for trial, regardless of whether such trial setting is continued.”³⁸

The exclusion from Act 312 of cases in which a trial date had been set on or before March 27, 2006, applied to the date of the order setting the trial, not the date for which the trial was set. In an interesting twist, plaintiffs in these cases had an option until August 7, 2006, to “opt-in” and bring themselves within the application of the new law,³⁹ but apparently none did so. The application of this exclusion has proved controversial, as discussed later in this Article.

Act 312 provides that the litigation is stayed until thirty days after plaintiff files with the court a certified mail return receipt to prove compliance with the requirement of notice to the Office of Conservation and the Attorney General.⁴⁰ It also provides that no relief shall be granted, nor shall the action be dismissed, if the required notice is not made.⁴¹ The Attorney General is provided with the right to intervene on behalf of the State in the litigation, whether before or after the stay period.⁴² The State’s intervention or failure to intervene, does not however, prejudice other administrative or civil action by the State.⁴³

A key provision of Act 312 occurs upon determination of environmental damage, whether by admission of a party or by determination by a trier of fact. Upon such determination, the court will order the legally responsible party or parties to develop a plan of evaluation or remediation to “applicable standards” of the contamination that resulted in the environmental damage.⁴⁴ This proposed plan is then subject to review by the Office of Conservation within LDNR, including

36. 2006 La. Acts 312 § 2.

37. LA. REV. STAT. ANN. § 30:29(K).

38. 2006 La. Acts 312 § 3.

39. *Id.*

40. LA. REV. STAT. ANN. § 30:29(B)(1).

41. *Id.* § 30:29(B)(4).

42. *Id.* § 30:29(B)(2).

43. *Id.* § 30:29(B)(3).

44. *Id.* § 30:29(C)(1).

review of the comments of any party and a public hearing.⁴⁵ This process ultimately leads to a determination by the Office of Conservation of the “most feasible plan to evaluate or remediate the environmental damage and protect the health, safety, and welfare of the people.”⁴⁶ A “feasible plan” must be the “most reasonable plan” and be “in compliance with the specific relevant and applicable standards” and regulation in effect at the time of the cleanup.⁴⁷

Following the Office of Conservation determination, Act 312 provides that the district court shall adopt the plan approved by the department, unless a party proves by a preponderance of the evidence that another plan is a more feasible plan.⁴⁸ Any appeal of the district court’s determination shall be a *de novo* review and shall be heard with preference and on an expedited basis.⁴⁹ The appellate court may affirm or adopt a more feasible plan.⁵⁰

In a most fundamental reform, Act 312 provides that the Court shall order the legally responsible party or parties to fund the implementation of the plan.⁵¹ The Act further provides that all damages for evaluation or remediation of environmental damage shall be paid into the registry of the court,⁵² and that both the Court and the LDNR shall retain oversight of the implementation of the plan.⁵³

Although Act 312 is generally perceived as adverse to the landowner community, it does contain several provisions that are designed to protect the landowners’ rights and create benefits for the landowner. First, the act specifically provides that it shall not be construed to impede or limit provisions in private contracts imposing remediation obligations in excess of regulatory requirements.⁵⁴ Next, the act affirmatively does not preclude “private claims suffered as a result of environmental damage,” which are not required to be paid into the registry of the court.⁵⁵ Finally, a party providing evidence upon which a judgment of environmental damage is based is entitled to recover costs, including expert fees, environmental evaluation, investigation, and testing, the cost of developing a plan of remediation and reasonable

45. *Id.* § 30:29(C)(2).

46. *Id.*

47. *Id.* § 30:29(I)(3).

48. *Id.* § 30:29(C)(5).

49. *Id.* § 30:29(C)(6)(b).

50. *Id.* § 30:29(C)(6)(c).

51. *Id.* § 30:29(D).

52. *Id.* § 30:29(D)(1).

53. *Id.* § 30:29(F).

54. *Id.* § 30:29(A).

55. *Id.* § 30:29(H).

attorney fees, attributable to producing that part of the evidence, from the responsible party or parties.⁵⁶ The Attorney General and LDNR are accorded similar rights.⁵⁷

In order to encourage self-enforcement, Act 312 provides that settlements are subject to court approval, notice and review by the State, and funding of estimated remediation costs deposited into the registry of the court.⁵⁸ The court may waive these requirements “if the settlement reached is for a minimal amount and is not dispositive of the entire litigation.”⁵⁹ Act 312 fails, however, to define “minimal amount.” In a further attempt to discourage parties from trying to avoid enforcement, Act 312 repeals the “dollar-for-dollar” credit previously available to responsible parties.⁶⁰

IV. ISSUES ARISING SINCE ENACTMENT OF ACT 312

The passage of Act 312 was viewed with intense interest by parties and attorneys involved in legacy site cases. So far, no case has gone to trial on the premise that Act 312 is applicable to that case, nor has any case been referred by a court to the Office of Conservation pursuant to Act 312. However, over one hundred notices have been issued to the state pursuant to Act 312, and a number of issues and disagreements have arisen concerning Act 312.⁶¹

This Part will summarize four major issues that have arisen concerning Act 312 since its passage. First, landowners and defendants in legacy cases have begun skirmishing as to how the act affects pre-trial and trial procedure, particularly the timing of trial. Second, disputes have arisen as to whether certain trial orders were proper at the time they were issued and therefore sufficient to exempt the cases from the application of the act. Third, the Office of Conservation has published proposed rules of procedure for proceedings for the determination of a plan pursuant to the act, and such rules are likely to be adopted in the near future. Finally, the constitutionality of Act 312 has been challenged

56. *Id.* § 30:29(E)(1).

57. *Id.* § 30:29(E)(2).

58. *Id.* § 30:29(J)(1).

59. *Id.*

60. *Id.* § 30:89.1.

61. E-mail from Ryan Seidemann, Assistant Attorney Gen., La. Dep’t of Justice, to Machel R. Lee, Editor in Chief, *Tulane Envtl. Law Journal*, Volume 20 (Apr. 2, 2007, 16:17 CST) (on file with the *Tulane Environmental Law Journal*); Telephone Interview by Machel R. Lee with W. Stephen Walker, Senior Attorney, La. Office of Conservation (Apr. 3, 2007) [hereinafter W. Stephen Walker Interview].

in several cases, and that issue is now pending before the Louisiana Supreme Court.

Landowners and defendants in legacy cases have begun skirmishing has to how Act 312 affects pretrial and trial procedure, particularly the timing of trial. Plaintiffs have generally taken the position that they are entitled to go to trial on all issues, including their “private claims,” before the case is referred to LDNR pursuant to Act 312.⁶² Defendants, on the other hand, have argued that a preliminary determination of whether there is environmental contamination, and who are the responsible parties, must be made by the court after a preliminary hearing. Then, these defendants argue, the case should be referred to LDNR for determination of an evaluation and/or remediation plan, and the plan received by the court, before the trial date is set on any “private claims.”⁶³ These procedural issues are likely to be fought out in all of the various district courts in which legacy cases are pending. They will very likely receive a wide variety of treatments by these various district courts.

A second set of issues arising since the enactment of Act 312 regard whether certain trial orders were proper at the time they were issued, and therefore are sufficient to exempt the cases from the application of Act 312. As noted above, Act 312 excluded from its effect “any case in which the court on or before March 27, 2006, has issued or signed an order setting the case for trial, regardless of whether such trial setting is continued.”⁶⁴ This exclusion applied to the date of the order setting the trial, not the date for which the trial was set. Under Louisiana rules of procedure, an order setting a case for trial is not proper before the issue is joined, i.e., before defendants file answers.⁶⁵ In several pending cases, defendants have argued that orders setting trial dates that were issued before answers were filed were null and void and therefore insufficient to remove the cases from the application of Act 312.⁶⁶ These arguments have generally been unsuccessful.

62. Memorandum of Plaintiffs on the Application of Act 312 of 2006, *Meaux v. Hilcorp Energy Co.*, 99-72994 (La. 15th Jud. Dist. Ct. argued Apr. 5, 2007).

63. Union Oil Co. of California’s Motion to Adopt Case Management Order To Implement the Procedures of L.A. R.S. 30:29, 99-72994 (La. 15th Jud. Dist. Ct. argued Apr. 5, 2007).

64. 2006 La. Acts 312 § 3.

65. LA. CODE CIV. PROC. ANN. art. 1571 (2006).

66. Defendant Bass Enterprises Production Company’s Declinatory and Dilatory Exceptions of Prematurity to Plaintiff’s Third and Amending Petition, or Alternatively, Motion To Stay Proceeding and Defer to Agency of Primary Jurisdiction, *Tebow v. Bradex Oil & Gas, Inc.*, 2005-7728 (La. 12th Jud. Dist. Ct. filed Aug. 7, 2006); Defendant Bass Enterprises Production Company’s Memorandum In Support of Its Declinatory and Dilatory Exceptions of Prematurity to

However, one notable case has gone the other way. In a dramatic opinion by the district court in *Dore v. Carter-Langham, Inc.*, pending in Cameron Parish, the Court, after a jury trial and verdict exceeding \$50 million, reconsidered its earlier ruling that Act 312 did not apply to the case.⁶⁷ The district court reasoned that, while the defendant had waived its right to object to the setting of the trial date before it filed an answer, the defendant was not in a position to waive the State of Louisiana's right to object.⁶⁸ Therefore, the court indicated that it would not enter judgment on the jury verdict until Act 312 notice was given and the State indicated its position.⁶⁹

In the long run, a more significant development may have come from the executive branch of the State of Louisiana. In the January 2007 issue of the *Louisiana Register*, the Office of Conservation published proposed rules of procedure for proceedings for the determination of a plan pursuant to Act 312.⁷⁰ The LDNR drafted the proposed rules with the input of an ad hoc committee of various stakeholders in an effort to find a consensus. This effort seems to have been successful, because there was no testimony critical of the rules at the public hearing held on February 28, 2006.⁷¹ Although there remains the possibility that the proposed rules will be modified, it appears likely that the LDNR will adopt the proposed rules (or something very close) in the near future (perhaps before the publication of this Article).

All of this, of course, will be swept away (and this Article become largely irrelevant) if it is determined that Act 312 is unconstitutional.

As noted above, Act 312 contains several provisions that are designed to protect the landowner's rights and create benefits for the landowner. First, the Act specifically provides that it shall not be construed to impede or limit provisions in private contracts imposing remediation obligations in excess of regulatory requirements.⁷² Next, the Act affirmatively does not preclude "private claims suffered as a result of environmental damage," or require that they be paid into the registry of

Plaintiff's Third and Amending Petition, or Alternatively, Motion To Stay Proceeding and Defer to Agency of Primary Jurisdiction, *Tebow*, 2005-7728 (La. 12th Jud. Dist. Ct. filed Aug. 7, 2006).

67. *Dore v. Carter-Langham, Inc.*, 10-16202 (La. 38th Jud. Dist. Ct. 01/31/07), available at <http://www.louisianalawblog.com/Dore%20v.%20Carter-Langham%201-31-07.pdf>.

68. *Id.* at p. 7.

69. *Id.* at p. 11.

70. 33 La. Reg. 159-63 (Jan. 2007), available at <http://doa.louisiana.gov/osr/reg/0701/contents.pdf>.

71. The author attended this public hearing. W. Stephen Walker Interview, *supra* note 61. Comments were submitted during the written comment period offering suggestions, some of which were incorporated into the final rules. But no comments opposed the rules in general. *Id.*

72. LA. REV. STAT. ANN. § 30:29(A) (2006).

the court.⁷³ These provisions would appear to protect the constitutionality of Act 312.

Nevertheless, in several pending cases, the constitutionality of Act 312 has been explicitly challenged. In a significant number of additional cases, plaintiffs have not expressly challenged the constitutionality of the Act, but have reserved the right to do so.⁷⁴ To date, only one court has expressly ruled on the constitutionality of Act 312 after a party has challenged constitutionality.

In that case, *MJ Farms, Ltd. v. Exxon Mobil Corp.*, pending in Catahoula Parish, the plaintiff did not assert unconstitutionality in its pleadings, but raised the constitutional issue in opposing a motion to enforce the stay provided by Act 312.⁷⁵ Plaintiff argued that Act 312 violated the holding of the Louisiana Supreme Court in *Bourgeois v. A.P. Green Industries, Inc.*⁷⁶ by depriving plaintiff of its asserted “legal right to recover money for damages suffered and/or sustained to its property.”⁷⁷ The problem, according to the plaintiff, was that “the money due and owing Plaintiff are reverted [sic] and not given directly to Plaintiff.”⁷⁸

Following argument and briefing by the plaintiff, defendants, and the office of the Attorney General, the district court in January of 2007 issued a judgment that Act 312 is “unconstitutional and unenforceable.”⁷⁹ The district court did not issue written reasons for its judgment, other than to refer in the judgment itself to three constitutional provisions: article V, section 16, of the Louisiana Constitution, the Fifth Amendment of the United States Constitution, and article I, section 4, of the Louisiana Constitution.⁸⁰ The district court provided no analysis or explanation of how Act 312 violates these provisions.

The Louisiana Constitution provides for direct appeal to the Louisiana Supreme Court when a Louisiana statute has been declared unconstitutional.⁸¹ The State of Louisiana has filed a suspensive appeal

73. *Id.* § 30:29(H).

74. *See e.g.*, Second Supplemental and Amending Petition for Damages, Primeaux v. Bil-Mik, Inc., 62,857 (La. 18th Jud. Dist. Ct. filed Mar. 19, 2007).

75. *M.J. Farms, Ltd. v. Exxon Mobil Corp.*, 24,055 (La. 7th Jud. Dist. Ct. 01/08/07), available at <http://www.theenergylawblog.com/MJ%20Farms%20Opinion.pdf>.

76. 00-1528 (La. 04/03/01); 783 So. 2d 1251.

77. Louisiana Trial Court Rules Act 312 Unconstitutional, posting of Stevia Walther to the Energy Law Blog, <http://www.theenergylawblog.com/2007/01/articles/environmental/louisiana-trial-court-rules-act-312-unconstitutional/> (Jan. 12, 2007) [hereinafter Court Rules Unconstitutional].

78. *Id.*

79. *M.J. Farms*, 24,055 (La. 7th Jud. Dist. Ct. 01/08/07).

80. *Id.*

81. LA. CONST. art. V, § 5(D).

of the judgment in *MJ Farms*.⁸² The district court record was lodged in the Louisiana Supreme Court on March 6, 2007. *MJ Farms* would appear a perfect vehicle for the Louisiana Supreme Court to resolve any doubts about the constitutionality of Act 312. However, the Louisiana Supreme Court has, on its own motion, raised the issue of whether it should take up the case at this time, because in the district court the constitutional issue was raised in a memorandum of law, rather than a pleading.⁸³ The Court's ruling on this jurisdictional point will determine whether it will address the constitutionality of Act 312 in the near term. The Supreme Court proceedings in this matter will doubtless be observed with great attention.

V. CONCLUSION

Act 312 of the 2006 Regular Session of the Louisiana Legislature was one of the most contentious and significant pieces of legislation that year. Its reach is clearly significant and intended to require that proven environmental damage arising from oilfield operations is actually remediated according to consistent standards to protect the public interest. Like most legislation of such significance, however, Act 312 has created new legal issues, many of which will take years to resolve.

82. Court Rules Unconstitutional, *supra* note 77.

83. *M.J. Farms, Ltd. v. Exxon Mobil Corp.*, No. 07-CA-0450 (La. Mar. 27, 2007) (order to show cause why this appeal should not be dismissed).